SIEMENS

PATENT
Attorney Docket No. 2002P08101WOUS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICEIN RE APPLICATION OF:

Inventor:	Ernst Schworm	Group Art Unit:	2618
Serial No.:	10/521,389	Examiner:	Janelle N. Young
Filed:	18 January 2005	Confirmation No.	2210

Title: ENCLOSURE, PARTICULARY A HOUSING FOR A MOBILE TELECOMMUNICATION DEVICE AND A METHOD FOR PRODUCING A HOUSING PART

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APPELLANTS' BRIEF UNDER 37 CFR 41.37

Sir:

This brief is in furtherance of the Notice of Appeal filed in this application on April 29, 2008.

1. REAL PARTY IN INTEREST - 37 CFR 41.37(c)(1)(i)

The real party in interest in this Appeal is the assignee of the present application, Siemens Aktiengesellschaft.

2. RELATED APPEALS AND INTERFERENCES - 37 CFR 41.37(c)(1)(ii)

There is no other appeal, interference or judicial proceeding that is related to or that will directly affect, or that will be directly affected by, or that will have a bearing on the Board's decision in this Appeal.

3. STATUS OF CLAIMS - 37 CFR 41.37(c)(1)(iii)

Claims cancelled: 1-15, 20, 21 and 23.

Claims withdrawn but not cancelled: None.

Claims pending: 16-19, 22 and 24-35.

Claims allowed: none.

Claims rejected: 16-19, 22 and 24-35.

The claims on appeal are 16-19, 22 and 24-35. A copy of the claims on appeal is attached hereto in the Claims Appendix. Appellants respectfully appeal the final rejection of claims 16-19, 22 and 24-35.

4. STATUS OF AMENDMENTS - 37 CFR 41.37(c)(1)(iv)

Following the Final Office Action mailed 31 December 2008, the Appellant filed an amendment and argument under 37 CFR 1.116 on 27 February 2008. As stated in the remarks accompanying the amendment, amendment was made to the claims to overcome new grounds of rejection under Section 112. In the Advisory Action mailed 15 April 2008 there was no statement indicating whether or not the amendment filed under Rule 116 would be entered or whether or not the rejections under Section 112 were overcome. However, during a telephone interview on 26 June 2008 the Examiner advised that the amendment filed under Rule 116 will be entered and the rejections under Section 112 are overcome. The record remains devoid of any substantive response by the Examiner to the multiple deficiencies in the art rejections that were identified in the amendment filed under Rule 1.116.

5. SUMMARY OF THE CLAIMED SUBJECT MATTER- 37 CFR 41.37(c)(1)(v)

With reference by page and line number to the detailed description, the following summary describes one or more exemplary embodiments disclosed in the Specification and

which are covered by specific claims, but it is to be understood that the claims are not so limited in scope.

5A. BRIEF BACKGROUND PROVIDING CONTEXT FOR THE SUMMARY OF CLAIMED SUBJECT MATTER

Mobile telecommunication devices are typically formed in enclosures that consist of two or more housing portions that hold components such as a keypad, a display field and a battery. By way of example, individual components may be assembled by inserting the keypad into an upper housing, then inserting the component containing the display into the upper housing and subsequently screwing the upper housing to a lower housing portion. The lower housing often contains a recess which accommodates the battery. A wide variety of arrangements for containing these devices have been in commercial use, including combinations of upper and lower plastic housing shells, shielding and seals. Notwithstanding these combinations, there is a need to achieve improved moisture and weather seal performance for enclosures of electrical devices, mechanical components and storage containers generally, including food containers.

The invention relates to an enclosure having a first enclosure base body and a second enclosure base body with a sealing function implemented along the interface of the two enclosure base bodies. With the first and second enclosure base bodies each including an edge, the two base bodies may butt against one another along the edges with a seal permanently fixed to one enclosure base body and resting against the edge of the second base body, with the sealing material consisting of an elastically deformable material.

A feature according to embodiments of the invention is a seal permanently fixed to an edge of the first enclosure body, which may be integrally formed with the first base body so that the first base body implements the sealing effect, e.g., the seal being an integral part of the first edge. A sealing effect may be achieved by elastic deformability of the material comprising the seal in that when the edges of the two base bodies are pushed together the sealing material deforms elastically and thus largely implements a sealing effect against the penetration of moisture, dust or other material.

Having a fixed joint between the seal and one of the two enclosure base bodies reduces the number of loose elements or elements which can be displaced with respect to one another in order to produce a sealing connection between the first enclosure base body and the second

enclosure base body. Nor is it necessary to provide a separate seal, for example in the form of a sealing ring and to provide corresponding holding devices, grooves or other mounting facilities for this purpose with their associated production resource requirement. The number of enclosure parts to be provided is thus reduced, and this simplifies both storage and handling of the enclosure parts.

The seal may project beyond the first enclosure base body in the direction of the second enclosure base body. A labyrinth seal can be implemented whereby, for example, the second enclosure base body is undercut along the edge in the manner of a step and the first enclosure base body projects into this step such that the first enclosure base body and the second enclosure base body overlap. In addition, it is possible for the second enclosure base body, when viewed from the outside in, to have a prominence positioned behind the seal and extending in the direction of the first enclosure base body. As a result a narrow channel can be formed between first enclosure base body and second enclosure base body in the interior of the housing behind the seal.

The edge of the second base body against which the seal rests may be produced from a harder material than the seal itself. Accordingly, the second enclosure base body can be produced from a single material which is simultaneously also used as the material for the second edge. It is also possible to produce the edge from a different material than is used for the remainder of the second enclosure body. The first enclosure body can likewise preferably be produced from a harder material than is used for the seal.

In described embodiments, the first enclosure base body is produced from a hard plastic and the seal from a soft plastic. The first enclosure base body may be produced together with the seal using the so-called two-color injection molding method. In two-color injection molding, also known as two-component injection molding, plastic materials for individual components and functional elements also employing different materials and hardness (hard/soft combinations) are produced in a single processing cycle. This can result in considerable savings in assembly costs. Depending on the choice of materials, components or elements produced in this way are characterized by a high adhesive strength which can be effected by a chemical bond or mechanical anchoring. For example, a permanent molecular bond is achieved by melting or welding. The two-component injection molding method is based on the friction-locked and/or form-locked connection of two plastic components having generally different properties to form

an integrated shaped part. According to the invention, a two-component injection molding method is applied to components which are intended to have both rigid and elastic areas, as a result of which different functions can be implemented simultaneously.

Production of such a housing with an elastic seal may be achieved using the two-color injection molding method as follows. In a first production step, a hard component is injected onto a fixed tool and is shaped with the impression of a first countertool. In a second production step, a soft component, forming the seal, is injected onto the hard component and is shaped by means of a second countertool. Releasing the mold both for the hard component and also for the soft component by moving the first and second counter tools (e.g., pressing dies) in the same direction provides a simple, fast and cost-effective production method providing an integrally formed sealing function. The soft component may be applied to the hard component while the hard component is at a temperature at which a bonding of the soft component to the hard component takes place, in particular a chemical molecular bonding, which is stronger than would be the case at normal room temperature.

5B. CONCISE EXPLANATION OF SUBJECT MATTER DEFINED IN EACH INDEPENDENT CLAIM

5B(i). Summary of Subject Matter Defined In Independent Claim 16

With reference to Figures 1, 2 and 3, an embodiment corresponding to **independent claim 16** is now described. The claim is directed to an enclosure or housing 1 for containing, for example, a mobile telecommunications device. The enclosure 1 includes (i) a first enclosure base body 2 (which represents an upper shell) and (ii) a second enclosure base body 9 (a lower shell). Together, the two base bodies 2 and 9 form the enclosure 1 for containing the device. See page 10, lines 15-33. The first enclosure base body 2 includes a first component 8 formed of a relatively hard material (e.g., a thermoplastic) and a second component 4 formed of relatively soft material, e.g., elastically deformable, formed against the hard base material 8. The first component 8 includes a first edge 3 positioned along an outer periphery thereof and configured to extend toward the second enclosure base body 9. See, again, page 10, lines 15-33. The second enclosure base body 9 is made of a second base material (e.g., hard component 18 of Figure 3). See page 11, line 36 - page 12, line 2. The second enclosure base body 9 includes a

second edge 10 (see page 10, line 26-33) along an outer periphery thereof, including a first recess 25 for receiving the first edge 3, e.g., a thermoplastic elastomeric soft component 4. See Figure 7 and page 13, lines 3-14. More generally, see page 12, line 10 to page 13, line 28 as well as Figures 5, 6 and7. When assembled, the first enclosure base body 2 and the second enclosure base body 9 butt against one another along the first edge 3 and the first recess 25. See Figure 1. Portions of the second component 4 of the first enclosure base body are spaced apart from the first edge 3 by a second recess 24 defined along the first edge 3 with the portions of the second component 4 providing a sealing first flange 27 configured to make contact with the second edge 10, said sealing first flange 27 made of an elastically deformable material. See Figures 8 and 9 and page 13, lines 23-39.

5B(ii). Summary of Subject Matter Defined In Independent Claim 32

Also, in accord with Figures 5-9, **independent claim 32** is directed to a method for producing a housing part for a mobile telecommunication device. A hard component 8 is injected onto a fixed tool (rotary platen mold) 19. See page 12, lines 10-16. The hard component 8 is shaped by a first countertool 22 moveable in a mold release direction. See page 12, lines 21-35. A soft component 4 is injected forming an elastic seal (4, 27) onto the hard component 8. See page 12, line 36 to page 13, line 21. The soft component 4 is shaped by a second countertool 23 which is moved in the same mold release direction as the first countertool 23 for releasing the mold 19. The method utilizes a two-color injection molding process (see, also, page 14, lines 13-17) and the housing part is formed by the hard component 8 and the seal 4, 27 (e.g., sealing flange). See, also, page 11, lines 10-20 and Figure 4.

5B(iii). Summary of Subject Matter Defined In Independent Claim 35.

With reference to Figures 4 and 7-9, a housing part according to **independent claim 35** includes a base body (upper shell) 2 having an outer surface (soft component 4) and an inner surface 8 opposing one another with the inner surface 8 including an edge perimeter 14. Page 11, lines 10-15. A flange 27 (referred to as a "sealing" flange), formed along and spaced apart from the edge perimeter 14, referred to as an "outer flange" of the hard component 8 (see page 11, lines 15-17), extends in a direction to press against the mating surface 10 (edge of base body 2 -

see also Figures 1, 8 and 9; see again page 10, lines 25-29) when contact with the mating surface 10 is made. At page 11, lines 17-22 describe formation of the perimeter 14 and flange 27 (in accord with the method of claim 32 for producing a housing part) as shown in Figure 7, with respect to a hard component recess 24 and a soft component recess 25. The flange 27 comprises an elastically deformable material (page 13, lines 34-37), wherein the base body 2 is made from a hard plastic and the flange 27 is made from a softer plastic compared to the hard plastic. Page 10, lines 15-20. See, also, page 13, lines 33-39. The base body 2 and the flange 27 form an integral part and are made by using a two-color injection molding process. See page 14, lines 13-17.

6. GROUNDS OF REJECTION TO BE REVIEWED UPON APPEAL - 37 CFR 41.37(c)(1)(vi)

1. Whether claims 16, 19, 27, and 29-31 are unpatentable under 35 U.S.C. Section 102 as being anticipated by U.S. 2004/0102230 (Nuovo). It is noted that the Final Office Action (page 3) lists claim 35 as also being rejected on this basis, but this is apparently an error, as the substance of the Office Action lacks a basis for rejection of claim 35 under Section 102 and claim 35 is separately rejected under Section 103.

2. Whether claims 17, 18 and 22 are unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. 4,711,361 (Mischenko).

3. Whether claims 24-25 are unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. 2004/0082370 (Gahl).

4. Whether claims 26 and 28 are unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. 2004/0211668 (Montminy).

5. Whether claims 32 and 34 are unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. 2004/0082370 (Gahl).

6. Whether claim 33 is unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. Patent 6,333,716 (Pontoppidan).

7. Whether claim 35 is unpatentable under 35 U.S.C. Section 103 over Nuovo and further in view of U.S. 2004/0082370 (Gahl).

7. ARGUMENT 37 CFR 41.37(c)(1)(vii)

7A. PATENTABILITY OF EACH CLAIM IS TO BE SEPARATELY CONSIDERED

Appellants urge that patentability of each claim should be separately considered. All of the claims are separately argued. General argument, based on deficiencies in the rejection of independent claim 16 under Section 102 and deficiencies in the rejection of claim 32 under Section 103, demonstrates patentability of all dependent claims. No claims depend from independent claim 35.

None of the rejected claims stand or fall together because each dependent claim further defines a unique combination that patentably distinguishes over the art of record. For this reason, the Board is requested to consider each argument presented with regard to each dependent claim. Argument demonstrating patentability of each dependent claim is presented under subheadings identifying each claim by number.

7B. OVERVIEW OF ARGUMENT RELATING TO ART REJECTIONS

The claimed invention differs markedly over the prior art. For example embodiments, packet switching networks and associated methods have data packet (telegram) transmissions in which a cyclical transmission interval includes a first phase ...

7C. APPELLANTS TRAVERSE ALL REJECTIONS BASED IN WHOLE OR PART ON THE NUOVO REFERENCE.

7C(1) REJECTION OF CLAIMS 16 19, 27, AND 29-31 UNDER SECTION 102 BASED ON THE NUOVO REFERENCE IS IN ERROR.

GENERAL BASIS TO OVERTURN ALL REJECTIONS UNDER SECTION 102

In order to sustain the rejection of independent claim 16 and claims 19, 27, and 29-31 which depend therefrom, under Section 102 it is necessary to clearly identify the particular part of the reference relied upon. As stated in 37 CFR 1.104(c)(2), when a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part of the reference relied upon must be designated as nearly as practical. The Nuovo reference discloses multiple features which require individual analysis to confirm whether every element in each claim is present. Further, MPEP §2131 provides that a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as contained in the claim. The elements must be arranged as required by the claim.

7C(2) REJECTION OF INDEPENDENT CLAIM 16 UNDER SECTION 102 BASED ON THE NUOVO REFERENCE IS IN ERROR.

Application of the Nuovo reference to reject claim 16 under Section 102 is deficient under the criteria for anticipation. The enclosure of claim 16 requires

a first enclosure base body and a second enclosure base body ... with ... a first component of the first enclosure base body formed of a relatively hard material and a second component of the first enclosure base body formed of relatively soft material and formed against the hard base material, the first component comprising a first edge positioned along an outer periphery thereof and configured to extend toward the second enclosure base body ...

the second enclosure base body comprising a second edge along an outer periphery thereof, including a first recess for receiving the first edge [of the first component], wherein the first enclosure base body and the second enclosure base body butt against one another along the first edge [of the first component] and the first recess [along the second edge of the second enclosure base body] ...

wherein portions of the second component of the first enclosure base body are spaced apart from the first edge [of the first component of the first enclosure base body] by a second recess defined along the first edge with the portions of the second component [of the first enclosure base body] providing a sealing first flange configured to make contact with the second edge, said sealing first flange made of an elastically deformable material.

As best understood, the Examiner rejected claim 16 under Section 102 based on the Nuovo reference because the Examiner has either mis-interpreted the claim language or has mis-interpreted the Nuovo reference. The Examiner identifies in the Nuovo reference: edges 320 of the front face 3 (figure 22b) which "take the form of a flange that extends around the perimeter of the front face." See Par. [0078]. In some respects, the rejection of claim 16 appears to be a copy of the former rejection based on former claim language. The final rejection fails to address the distinction that the *sealing first flange* of claim 16 must be part of the first enclosure body. This, alone, is sufficient basis to remove the rejection under Section 102. However, other distinctions are again noted. Details of the rejection are now addressed.

Noting that claim 16 requires a *"first enclosure base body"* having first and second components, the rejection reads the first component of the *"first enclosure base body"* on a "front face 3 (Fig 1 of Nuovo) and reads the second component of the *"first enclosure base body"* on a Perspex ™ layer 37 (Fig 5 of Nuovo). Although claim 16 requires *a first component of the first enclosure base body formed of a relatively hard material and a second component of the first enclosure base body formed of relatively soft material and formed against the hard base material* the rejection inconsistently alludes to a rear face 21 (Fig 2 and 6a of Nuovo) as having the properties of a *"relatively soft material formed against the relatively hard material"* as though the rear face 21 is what the claimed *second component of the first enclosure base body* is to be read upon.

Although the Examiner has not been clear as to how the above features are to be read upon the Nuovo reference, what is clear is that the Nuovo reference does not disclose the *sealing first flange* of claim 16 as part of the first enclosure body. In fact, Appellant has made of record that a reason for amending claim 16 (amendment filed 12 February 2007) was to remove potential for misunderstanding by the Examiner with regard to the *sealing first flange* and assure that the Examiner would not attempt to read the *sealing first flange* as part of a "second enclosure base body."

As a second point of distinction, according to claim 16, the relatively soft material of the second component of the first enclosure base body is "formed against the hard base material" of the first component of the first enclosure base body. This provides another reason why applicant's claimed "relatively soft material of the second component of the first enclosure base

body" cannot be read on any feature of Nuovo. In fact, the final rejection is not clear (see page 4) as to how one might find this feature in Nuovo. The rejection cites Page 6, par [0089] and page 7 pars [0095] - [0099] but does not identify a component on which one might read Appellant's "relatively soft material of the second component of the first enclosure base body." As already noted, under Section 102 it is necessary to clearly identify the particular part of the reference relied upon. Also, as stated in 37 CFR 1.104(c)(2), when a reference is complex or shows or describes inventions other than that claimed by the applicant, the particular part of the reference relied upon must be designated as nearly as practical. In this regard the Examiner has not carried the requisite burden to show how the claimed feature might be read upon the prior art. In fact, Appellant cannot find any way to do so. The rejection cannot identify a component in Nuovo corresponding to the claimed relatively soft material of the second component of the first enclosure base body.

A third distinction between claim 16 and the prior art relates to the following claim language:

portions of the second component of the first enclosure base body are spaced apart from the first edge [of the first component of the first enclosure base body] by a **second recess** defined along the first edge with the portions of the second component [of the first enclosure base body] providing a sealing first flange configured to make contact with the second edge, said sealing first flange made of an elastically deformable material.

In this regard, the rejection proposes reading the claimed *second recess* upon the rails 22, 23 of Nuovo. This cannot be because the *second recess* must be along the "first edge." The "first edge" of claim 16 cannot be read upon feature 320 in Figure 22b of Nuovo. This is because the claimed "sealing first flange" must be part of the "first enclosure base body" and cannot be part of the "second enclosure base body." The Appellant has attempted to apprise the Examiner that it is improper to read the "sealing first flange" on, for example, the side frame 20 shown in Fig. 1 of Nuovo. See page 4 of the Final Office Action. It is not clear how the Examiner intends to consistently read the above claim language on the Nuovo reference. Also, with the foregoing explanation, it should be clear that the "*first edge*" cannot be read upon feature 320 of Nuovo and the "*second recess*" cannot be read upon the feature 320. It is not possible to read claim 16 on the prior art. The Final Office Action has failed to respond to these points.

Example embodiments of structures according to claim 16 are illustrated in Figures 8 and 9. In Figure 8, a first sealing flange 27 of relatively soft material is spaced apart from the flange 14 (which is the edge of the relatively hard component 8) and a recess 30 is defined along the edge 10. With this recess, and as shown in Figure 9, portions of the second component (base body) 9 are spaced apart from the first flange 14, i.e., the edge of the relatively hard component 8.

In the embodiment of Figure 9, a recess 31 is also defined between the sealing flange 27 and the edge of the hard component 8 which forms the flange 14. The second recess 31 may receive the additional sealing flange 28 that is formed on the second component (base body) 9. On the other hand, none of the claimed structure can be read upon the Nuovo reference. By way of example, the Nuovo reference does not teach or suggest a structure wherein:

> "portions of the second component of the first enclosure base body are spaced apart from the first edge by a recess defined along the first edge"

If the Examiner disagrees, the Examiner is obliged to completely and consistently explain her position with full citations such that Appellant can address the argument. Appellant has previously requested such clarification without receiving the requested support for the Examiner's position. The Examiner cannot maintain a rejection without fully explaining how it is believed that the claims are anticipated.

7C(3) REJECTION OF DEPENDENT CLAIMS 19, 27 AND 29-31 UNDER SECTION 102 BASED ON THE NUOVO REFERENCE IS ALSO IN ERROR.

7C(3)i. CLAIM 19 FURTHER DISTINGUISHES OVER THE NUOVO REFERENCE

The enclosure according to Claim 19 requires that when the first enclosure base body and the second enclosure base body butt against one another, a labyrinth seal is formed by multiple flanges each extending from one enclosure base body into a recess in the other enclosure base body. The rejection (see page 5 of the Final Office Action) asserts that Pars [0006] and [0078] of Nuovo which disclose "flanges" read upon the claimed labyrinth seal, this being a combination

of a front face 3 and a Perspex layer 37. Appellants urge that the Examiner confuses a flange with a seal. Nothing in the Nuovo reference supports reading characteristics of a seal into a flange of Nuovo. Furthermore, the relatively soft material of the second component of the first enclosure base body remains a requisite component of claim 19. That is, Appellant's "sealing first flange" is configured to make contact with the second edge, and is made of an elastically deformable material.

7C(3)ii. CLAIM 27 FURTHER DISTINGUISHES OVER THE NUOVO REFERENCE

In the enclosure according to Claim 27, the first base material comprises a thermoplastic material. Appellant does not claim thermoplastic material in itself as novel. Rather, the claim is directed to a combination of features and the combination further distinguishes.

7C(3)iii. CLAIM 29 FURTHER DISTINGUISHES OVER THE NUOVO REFERENCE

The enclosure according to Claim 29 is configured for accommodating electrical, electronic, or mechanical components. Appellant does not claim an enclosure in itself as novel. Rather, the claim is directed to a combination of features and the combination further distinguishes.

7C(3)iv. CLAIM 30 FURTHER DISTINGUISHES OVER THE NUOVO REFERENCE

The enclosure according to Claim 30 is configured as a housing for a mobile telecommunication device. Appellant does not claim an enclosure for a mobile telecommunication device in itself as novel. Rather, the claim is directed to a combination of features and the combination further distinguishes.

7C(3)v. CLAIM 31 FURTHER DISTINGUISHES OVER THE NUOVO REFERENCE

The enclosure according to Claim 31 includes a third enclosure base body for accommodating an exchangeable electrical power source, e.g., a battery, wherein the third enclosure base body butts either against the first enclosure base body or against the second enclosure base body and is sealed to the respective enclosure base body by an edge flange integrally formed in one base body and configured to extend into a recess formed in the other base body. The rejection relies upon the Nuovo reference but cannot provide support for the a body which is sealed to the respective enclosure base body by an edge flange integrally formed

in one base body and configured to extend into a recess formed in the other base body. The citations made in this rejection are deficient as evidenced by the failure to cite all requisite components in the Figures of Nuovo on which the claimed features might be read. That is, the rejection does not identify

an edge flange integrally formed in one base body and configured to extend into a recess formed in the other base body.

The rejection must be overturned based on inability to expressly identify components upon which the claim can be read. There is no anticipation.

7D THE REJECTION OF CLAIMS 17, 18 AND 22 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF U.S. 4,711,361 (MISCHENKO) IS IN ERROR.

Each of the claims depending from claims 1, 6 and 10 and rejected under section 103 defines distinct and non-obvious subject matter and further distinguishes the invention over the prior art.

7D(1). CLAIM 17 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF MISCHENKO.

In the enclosure according to Claim 17, one of the first component of the first enclosure base body and the second enclosure base body comprises a second flange positioned along an outer periphery thereof and configured to extend into a recess formed along the outer periphery of the other enclosure base body. To reject this claim over the combination it appears necessary to reconstruct the Nuovo reference to add a second flange " along an outer periphery" which extends into a "recess along the outer periphery." The Mischenko reference does not include such features and there is no teaching or motivation to reconstruct the arrangement of Nuovo. It is only the Appellant who teaches this arrangement.

7D(2). CLAIM 18 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF MISCHENKO.

The enclosure according to Claim 18 requires that one of the first component of the first enclosure base body and the second enclosure base body comprises a third flange positioned between the first and second flanges and configured to extend into a recess formed along the outer periphery of the other one of the first component of the first enclosure base body and the second enclosure base body. Based on the Mischenko reference it is not clear how there would be a third flange. That reference does not appear to disclose structure which one might simply "add" to Nuovo in order to arrive with " a third flange positioned between the first and second flanges and configured to extend into a recess." It is urged that more is required to carry the burden of rejecting this claim. Appellant cannot understand the logic for creating the claimed subject matter from the prior art.

7D(3). CLAIM 22 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF MISCHENKO.

In the enclosure according to Claim 22 the first enclosure base body and the second enclosure base body butt against one another, the second edge flange is positioned interior to the first edge flange and the second edge flange is formed of a harder material than the first edge flange. This combination of features does not result from the combination. The final rejection does not provide support to explain what elements are present in the prior art that meet the terms of the claimed features. Specifically, for example, the rejection does not identify the "harder material" and does not locate the second edge flange "interior" to the first edge flange.

7E THE REJECTION OF CLAIMS 24 AND 25 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF GAHL (2004/0082370) IS IN ERROR.

7E(1). CLAIM 24 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF GAHL.

In the enclosure according to Claim 24 the first enclosure base body is made from a hard plastic and the second edge flange is made from a plastic softer than the hard plastic. The deficiencies of Gahl have already been made of record but the Examiner does not appear

responsive. Specifically, the reference cannot be characterized as disclosing "injecting a soft component forming an elastic seal onto the hard component ..." Specifically, the Gahl reference (see Paragraphs 10, 13 and 16) does not disclose an elastic material. The referenced paragraphs actually describe "electrical material." Moreover, the citation in the Gahl reference (par. 0013) does not even appear to suggest any difference in hardness such that either the first component or the second component would be characterized as a hard component or a soft component. For these reasons, it is submitted that claim 24 is distinct and non-obvious over any combination of the cited art.

7E(2). CLAIM 25 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF GAHL.

In the enclosure according to Claim 25, which depends from claim 24, the first enclosure base body and the second edge flange are made using a two-color or two-component injection molding method. While the Gahl reference references a two-component molding process, this is not in the context of providing hard and soft components. There is no suggestion of using the claimed process for this purpose. The rejection should be reversed.

7F. THE REJECTION OF CLAIMS 26 AND 28 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF MONTMINY IS IN ERROR.

7F(1). CLAIM 26 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF MONTMINY.

The first edge flange in enclosure according to Claim 26 comprises a thermoplastic elastomer. The rejection cites Montminy for use of thermoplastic elastomers as though this in itself (rather than the claimed combination) is the invention. The rejection argues that Appellant's combination would result by a replacement of the flange material in Nuovo with the flange material in Montminy and this would be taught by Nuovo's use of flexible and resilient materials. However, it is not at all apparent how or why resilience against "drops" would relate to replacement of an edge flange when an edge flange is not seen to be the portin of the enclosure which would suffer impact resulting from a drop. The argument for motivation also cites a need for resistance to fluid damages, but this is not suggested in the Nuovo reference. It is

submitted that the basis for combining the references is lacking and the combination only results from hindsight knowledge of the Appellant's teachings, absent which the Examiner would not have sought out the Montminy reference.

7F(2). CLAIM 28 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF MONTMINY.

In the enclosure according to Claim 28 the first base material comprises a thermoplastic material. The rejection does not address this claim separately and Appellant refers to the argument presented above for claim 26 as applying to distinguish claim 28 over the combination.

7G. THE REJECTION OF CLAIMS 32 AND 34 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF GAHL IS IN ERROR.

7G(1) CLAIM 32 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF GAHL.

The method of claim 32 for producing a housing part for a mobile telecommunication device includes:

> injecting a hard component onto a fixed tool;
> shaping the hard component by a first countertool moveable in a mold release direction;
> injecting a soft component forming an elastic seal onto the hard component; and
> shaping the soft component by a second countertool which is moved in the same mold release direction as the first countertool for releasing the mold, wherein the method utilizes a two-color injection molding process and the housing part is formed by the hard component and the seal.

The final rejection of this claim is nearly three pages of text and yet appears to ignore the point previously made of record that the rejection is premised on an incorrect conclusion: that the Gahl reference discloses "injecting a soft component forming an elastic seal onto the hard component ..." It has already been brought to the Examiner's attention (see the response filed 12 February 2007) that the reference does not disclose such subject matter. Specifically, the first final office action characterized the Gahl reference (at Paragraphs 10, 13 and 16) as disclosing an elastic material while the referenced paragraphs actually describe "electrical material."

Moreover, the citation in the Gahl reference (par. 0013) does not even appear to suggest any difference in hardness such that either the first component or the second component would be characterized as a hard component or a soft component. For these reasons, it is submitted that claim 32 and the claims which depend therefrom are each distinct and non-obvious over any combination of the cited art.

The Examiner's response to these arguments is not understood. At pages 14-15 the Final Office Action alludes to disclosure in applicant's specification and appears to read the Gahl reference thereon. It is not understood how this relates to the requirement of reading the claimed subject matter on a prior art combination. The Examiner was requested to again present the argument in a more conventional manner that comports with patent office procedure, but the Advisory Action was silent in this regard.

Another reason that the rejection of claim 32 should be withdrawn is that technical differences preclude combining the references under Section 103. The rejection relies upon Nuovo for disclosing hard components and soft components. Specifically, the rejection refers to Pars [0092] and [0106] of Nuovo, but the passages which the Examiner cites reference sapphire, which is a naturally occurring stone. Thus the Nuovo reference would have to be reconstructed to meet the terms of claim 32. Moreover, the Nuovo reference teaches use of ruby, e.g., sapphire, because it is "an attractive jewel" and it "will provide greater accuracy of fit of the key in the device ..."

For these reasons, it is submitted that claim 32 and the claims which depend therefrom are each distinct and non-obvious over any combination of the cited art. Also, with regard to 32, it would be incorrect to rely upon disclosure in Nuovo of sapphire material to meet the terms of this claim, e.g., a base body made from a hard plastic, because sapphire is not made with an injection molding process.

7G(2) CLAIM 34 DISTINGUISHES OVER THE COMBINATION OF NUOVO IN VIEW OF GAHL.

The rejection of claim 34, reciting that the soft component is applied to the hard component while the latter is still warm, is also in error for reasons noted above with regard to claim 32. The Gahl reference does not disclose "soft" and "hard" components.

7H. THE REJECTION OF CLAIM 33 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF PONTOPPIDAN IS IN ERROR.

In the method according to Claim 33, a rotary platen mold is used, the rotation allowing simultaneous processing of two housing parts, one having the hard component applied and one having the soft component applied. The final rejection relies upon Pontoppidan for disclosing a rotating platen for simultaneous processing of two housing parts, allowing for application of both a hard and a soft component. Even a cursory review of this reference confirms it is inapplicable. The Examiner's citations of col. 6 and col. 8 from Pontoppidan do not appear relevant. The reference says nothing about a hard component and a soft component. It is only hindsight knowledge that leads the Examiner to suggest use of a technique for an antenna body to reconstruct the claimed subject matter. More is required and the rejection must be reversed.

7I. THE REJECTION OF CLAIM 35 UNDER 35 U.S.C. SECTION 103 OVER NUOVO AND FURTHER IN VIEW OF GAHL IS IN ERROR.

Independent Claim 35 is directed to housing part, comprising:

a base body having an outer surface and an inner surface opposing one another with the inner surface including an edge perimeter; and

a flange, formed along and spaced apart from the edge perimeter, extending in a direction to press against the mating surface when contact with the mating surface is made,

wherein the flange comprises an elastically deformable material, wherein the base body is made from a hard plastic and the flange is made from a softer plastic compared to the hard plastic, and

wherein the base body and the flange form an integral part and are made by using a two-color injection molding process.

The rejection of independent claim 35 under Section 103 over Nuovo in view of Gahl is not understood because applicant claims "a flange, formed along and spaced apart from the edge perimeter" and the claim also requires that

... the flange comprises an elastically deformable material, wherein the base body is made from a hard plastic and the flange is made from a softer plastic compared to the hard plastic...

The Examiner's combination of Nuovo and Gahl appears to lack features called out in claim 35. The rejection does not identify with specificity all of the features of Nuovo and Gahl

which the Examiner relies upon. However, the Examiner's reference to paragraph [0098] of Nuovo indicates that, in lieu of a flange comprising elastically deformable material, Nuovo discloses a silicon sealant 69. Thus Nuovo does not appear to disclose the claimed flange. In response to applicant's request that the Examiner explain exactly how the references are being applied, the Examiner has provided a response without support, suggesting at page 18 of the Final Office Action that "edges of the front face take the form of a flange ..." At best this is speculative and such conjecture is insufficient to reject the claim.

In summary, instead of merely requiring an edge perimeter adapted to contact a mating surface, claim 35 requires

> "a flange, formed along and spaced apart from the edge perimeter, extending in a direction to press against the mating surface when contact with the mating surface is made ..."

Neither the Nuovo reference nor the Gahl reference teaches or suggests this structure. Moreover, for reasons recited above with regard to claim 32, the Gahl reference does not teach or suggest a

> "base body ... made from a hard plastic and ... [a] flange ... made from a softer plastic compared to the hard plastic, and wherein the base body and the flange form an integral part and are made by using a two-color injection molding process."

Also, with regard to claim 35, it would be incorrect to rely upon disclosure in Nuovo of sapphire material to meet the terms of this claim, e.g., a base body made from a hard plastic, because sapphire is not made with an injection molding process.

7J. CONCLUSIONS

Argument has been presented to demonstrate that the rejections under Section 102 and Section 103 are deficient and that the dependent claims further distinguish over the prior art. The Examiner has argued rejections when claimed features are absent from the references and not suggested by the prior art. Accordingly, none of the rejections can be sustained. For all of the above argued reasons, all of the rejections should be withdrawn and the claims should be allowed.

8. APPENDICES

An appendix containing a copy of the claims involved in this appeal is provided herewith. No evidence appendix or related proceedings appendix is provided because no such evidence or related proceeding is applicable to this appeal.

Respectfully submitted,

Dated: 6/30/08

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9. APPENDIX OF CLAIMS ON APPEAL

16. An enclosure for housing a device, comprising:

a first enclosure base body and a second enclosure base body which, together, form an enclosure for containing the device, with:

the first enclosure base body comprising a first component of the first enclosure base body formed of a relatively hard material and a second component of the first enclosure base body formed of relatively soft material and formed against the hard base material, the first component comprising a first edge positioned along an outer periphery thereof and configured to extend toward the second enclosure base body; and

the second enclosure base body made of a second base material, the second enclosure base body comprising a second edge along an outer periphery thereof, including a first recess for receiving the first edge, wherein the first enclosure base body and the second enclosure base body butt against one another along the first edge and the first recess; and

wherein portions of the second component of the first enclosure base body are spaced apart from the first edge by a second recess defined along the first edge with the portions of the second component providing a sealing first flange configured to make contact with the second edge, said sealing first flange made of an elastically deformable material.

17. The enclosure according to Claim 16, wherein one of the first component of the first enclosure base body and the second enclosure base body comprises a second flange positioned along an outer periphery thereof and configured to extend into a recess formed along the outer periphery of the other enclosure base body.

18. The enclosure according to Claim 17, wherein one of the first component of the first enclosure base body and the second enclosure base body comprises a third flange positioned between the first and second flanges and configured to extend into a recess formed along the outer periphery of the other one of the first component of the first enclosure base body and the second enclosure base body.

19. The enclosure according to Claim 16, wherein, when the first enclosure base body and the second enclosure base body butt against one another, a labyrinth seal is formed by multiple flanges each extending from one enclosure base body into a recess in the other enclosure base body.

22. The enclosure according to Claim 17, wherein, when the first enclosure base body and the second enclosure base body butt against one another, the second edge flange is positioned interior to the first edge flange and the second edge flange is formed of a harder material than the first edge flange.

24. The enclosure according to Claim 17, wherein the first enclosure base body is made from a hard plastic and the second edge flange is made from a plastic softer than the hard plastic.

25. The enclosure according to Claim 24, wherein the first enclosure base body and the second edge flange are made using a two-color or two-component injection molding method.

26. The enclosure according to Claim 16, wherein the first edge flange comprises a thermoplastic elastomer.

27. The enclosure according to Claim 16, wherein the first base material comprises a thermoplastic material.

28. The enclosure according to Claim 16, wherein the first edge flange comprises a material having a Shore hardness between 50 and 60.

29. The enclosure according to Claim 16, configured for accommodating electrical, electronic, or mechanical components.

30. The enclosure according to Claim 16, configured as a housing for a mobile telecommunication device.

31. The enclosure according to Claim 16, further comprising:

a third enclosure base body for accommodating an exchangeable electrical power source, wherein the third enclosure base body butts either against the first enclosure base body or against the second enclosure base body and is sealed to the respective enclosure base body by an edge flange intergrally formed in one base body and configured to extend into a recess formed in the other base body.

32. A method for producing a housing part for a mobile telecommunication device, comprising:

injecting a hard component onto a fixed tool;

shaping the hard component by a first countertool moveable in a mold release direction;

injecting a soft component forming an elastic seal onto the hard component; and

shaping the soft component by a second countertool which is moved in the same mold release direction as the first countertool for releasing the mold, wherein the method utilizes a two-color injection molding process and the housing part is formed by the hard component and the seal.

33. The method according to Claim 32, wherein a rotary platen mold is used, the rotation allowing simultaneous processing of two housing parts, one having the hard component applied and one having the soft component applied.

34. The method according to Claim 32, wherein the soft component is applied to the hard component while the latter is still warm.

35. A housing part, comprising:

a base body having an outer surface and an inner surface opposing one another with the inner surface including an edge perimeter; and

a flange, formed along and spaced apart from the edge perimeter, extending in a direction to press against the mating surface when contact with the mating surface is made,

wherein the flange comprises an elastically deformable material, wherein the base body is made from a hard plastic and the flange is made from a softer plastic compared to the hard plastic, and

wherein the base body and the flange form an integral part and are made by using a two-color injection molding process.

10. EVIDENCE APPENDIX - 37 CFR 41.37(c) (1) (ix)

None

11. RELATED PROCEEDINGS APPENDIX - 37 CFR 41.37(c) (1) (x)

None